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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

SERVED OCT 16 1995

Joint Application of

DELTA AIR **LINES**, INC.
SWISSAIR, SWISS AIR TRANSPORT
COMPANY, LTD.
SABENA S.A., SABENA BELGIAN WORLD
AIRLINES, and
AUSTRIAN **AIRLINES**, **ÖSTERREICHISCHE**
LUFTVERKEHRSAG

for approval of and Antitrust Immunity for
Alliance Agreements under 49 U.S.C. 4 1308 and
41309

Docket OST-95-618 - 12

SCHEDULING NOTICE AND INITIAL DETERMINATION ON MOTION FOR
CONFIDENTIAL TREATMENT UNDER 14 C.F.R. 302.39

BACKGROUND

On September 8, 1995, Delta Air Lines, Inc. ("Delta"), Swissair, Swiss Air Transport Company, Ltd. ("Swissair"), Sabena S.A., Sabena Belgian World Airlines ("Sabena"), and Austrian Airlines, **Österreichische** Luftverkehrs AG ("Austrian") filed a joint application for approval of and antitrust **immunity** for three separate and parallel Commercial Cooperation and Marketing Agreements (the "**Cooperation** Agreements"), between Delta, on the one hand, and each of Austrian, Sabena and **Swissair**, on the other hand, and a Coordination Agreement among the four applicants covering the coordination of the three Cooperation Agreements (collectively referred to as the "Alliance Agreements"). The application was filed pursuant to 49 U.S.C. 41308 and 41309.

According to the joint applicants, the objective of the Alliance Agreements is to establish legal frameworks that will allow the applicants to cooperate to the extent necessary to create a 'seamless air transport system,' while retaining their separate corporate and national identities. The applicants ask that we grant the requested approval and immunity for a five-year term, consistent with the duration of approvals previously granted by the Department to Northwest Airlines, Inc. and **KLM** Royal Dutch Airlines. Orders 93-1-1 1 and 92-1 1-27.

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Based on our initial review of the joint application, we determined that it lacked certain significant and relevant information needed by the Department to consider this matter fairly and expeditiously. Therefore, on September 25, 1995, we directed the joint applicants to submit additional information and evidence, as a supplement to their joint application; and deferred the 21day deadline for the filing of comments set forth in 14 C.F.R. Part 303 until further notice. Additionally, we stated that when we determined that the joint application was complete, we would establish a procedural schedule for comments and such other responsive pleadings as may be determined necessary to decide this matter. Order 95-9-27.

SUBMISSION OF SUPPLEMENTAL INFORMATION

On October 10, 1995, the joint applicants filed the supplemental information specified in Order 95-9-27. In conjunction with this submission, the applicants filed a joint motion under 14 C.F.R. 302.39 of our regulations requesting confidential treatment for certain documents and information.

First, regarding information items 1 and 2 (Order 95-9-27 at **2**), the applicants request that, besides confidential consideration, the Department restrict access to these documents and information to counsel and outside experts for interested parties in this case. The applicants state that such limited access is required due to the “highly competitively sensitive nature of the documents and information contained in these responses.”

Second, regarding information item 7 (Order 95-9-27 at **3**), the applicants request “routine” Rule 39 confidential treatment.

Third, the applicants request that various Delta documents be withheld pending Departmental review on an *in camera* basis and a determination by the Department of both its confidentiality and its relevance to this proceeding.

DECISION

As an initial matter, we find that the record of this case is now substantially complete, and we will establish procedural deadlines at this time. However, we will defer action on the applicants’ request for confidential treatment and *in camera* review of certain Delta material.

A. Motions for Confidential Treatment, Access Issues, and *In Camera* Review

We note that answers to the applicants’ requests for (1) confidential treatment of material submitted in response to our information items **1**, **2** and **7** (Order 95-9-27 at **2** and **3**), and (2) *in camera* review of certain Delta materials are due October 19, 1995. Therefore, we will defer our determination on these matters, pending expiration of our regulatory comment deadline.

Upon expiration of the regulatory comment period, we will determine whether confidential treatment of certain information and informal review of Delta's material is appropriate. Regarding the applicants' request for *in camera* review, if we determine that review of the material is appropriate, and we find that the information is relevant to our determination in this matter, we will require that the information be filed in the record. Conversely, if we initially determine that the reviewed materials are not relevant to our determination, we will not require that the materials be filed in the docket, while reserving our right subsequently to determine, at anytime, that the previously reviewed information is significant and relevant, and therefore must be placed in the docket. Of course, the applicants could then seek confidential treatment of this material under Rule 39.

Further, to avoid unnecessary delay regarding the documents already before us, we have decided, *sua sponte*, to provide for limited access to each of these informational items (1, 2 and 7). Therefore, counsel and outside experts, for the interested parties only, may review these documents in the Docket Section at the U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, D.C., provided that such parties submit in advance an affidavit stating that he or she will preserve the confidentiality of the information and will only use it to participate in this proceeding. Any pleading or other filing that includes or discusses information contained in the confidential documents must be accompanied by a Rule 39 motion requesting confidential treatment.

B. Procedural Dates

We have fully reviewed the applicants' supplemental information, and now have determined, except as explained above, that the record of this case is substantially complete. The Department hereby gives notice to the parties in this proceeding and all other interested persons of the following procedural dates that will govern filings in this matter:

Comments to the application: November 3, 1995

Replies to the comment: November 13, 1995

By:

Dated: October 13, 1945

✓
MARK L. GERCHICK
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)